

REMARKS

Applicants request favorable consideration of the above-referenced application in view of the above amendments and the following remarks.

Claims 1-8 and 10 are now pending in the present application, with Claims 1, 5, 7, and 10 being independent. By this Amendment, Applicant has canceled Claim 9 and added new independent Claim 10.

Applicants submit that new independent Claim 10 is fully supported by the specification, particularly, paragraphs [0147] and [0148].

Claim 9 stands rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,489,307 (Kuslich et al.). Applicants have cancelled independent Claim 9, rendering the rejection moot.

Claims 1-9 stand rejected under 35 U.S.C. § 102 as being anticipated by International Patent Application Publication No. WO 02/09801 (Davison et al.). Applicants traverse this rejection.

Applicants note that Davison et al. published in 2002. The present application claims priority to, among others, parent Application No. 09/815,693, which was filed on March 23, 2001. Because the parent application for the present application was filed prior to the publication of Davison et al., Applicants submit that such document is not prior art under 35 U.S.C. § 102(b). Consequently, Applicants request that the rejection be withdrawn.

Applicants also note that the Examiner suggested in the Office Action that he does not fully accept the Applicants' interpretation of the disclosure of the present specification with respect to support for the pending claims. While there is no outstanding rejection in


this regard, Applicants wish to point out to the Examiner that the claims are fully supported by the specification.

Although the Examiner believes that the specification only describes the use of a single bone screw through the cannula, Applicants submit that one of ordinary skill in the relevant art, at the time of the invention, would have understood that multiple bone screws are used in securing different vertebrae together, and would have understood the disclosure to describe the use of multiple bone screws. Furthermore, it is also the Examiner's position that the specification does not describe using a single cannula at a single incision site to implant fixation elements on different vertebrae, because a system for accessing the different vertebrae is not described. Applicants wish to bring to the Examiner's attention that the specification clearly discusses, at paragraph [00147], line 4, for example, orienting the cannula 20 over a worksite. Furthermore, as shown in Figure 11, and discussed in paragraph [0111], the cannula is intended to provide a broad working space. This is made clear through the description of viewing element 50 and lens 55, which are manipulated to different positions to enable the surgeon to see the totality of the work space.

For the forgoing reasons, Applicant submits that all outstanding matters have been addressed.

Applicant's undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



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